

HOUSE BILL REPORT

HB 1261

As Reported by House Committee On:
Judiciary

Title: An act relating to adult guardianship and protective proceedings jurisdiction.

Brief Description: Enacting the adult guardianship and protective proceedings jurisdiction act.

Sponsors: Representatives Goodman, Moeller, Green, Williams, Pedersen, Appleton, Morrell and Ormsby; by request of Uniform Legislation Commission.

Brief History:

Committee Activity:

Judiciary: 1/21/09, 2/9/09 [DPS].

Brief Summary of Substitute Bill

- Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which establishes procedures for resolving interstate jurisdictional issues affecting guardianship proceedings.
- Provides a process for communication and cooperation between courts in different states.
- Specifies standards for establishing the state court with primary jurisdiction.
- Creates a process for transferring jurisdiction to another state.
- Allows recognition and enforcement of out-of-state orders.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Edie Adams (786-7180)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Guardianship Proceedings.

Guardianship is a legal process through which a guardian is given the power to make decisions for a person who is determined to be "incapacitated" and therefore unable to take care of himself or herself. A person may be incapacitated if the individual is at a significant risk of financial harm because of an inability to manage his or her property or finances or has a significant risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety.

The court may establish a guardianship over the person, the person's estate, or both. The court may also establish a limited guardianship for persons who need protection or assistance because of an incapacity, but who are capable of managing some of their affairs. A guardian of an incapacitated person's estate is responsible for managing the person's property and finances. A guardian of the person is responsible for assessing and meeting the person's physical, mental, and emotional needs.

Adult Guardianship and Protective Proceedings Jurisdiction Act.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is an organization that authors and promotes enactment of uniform state laws in areas of law where national uniformity is desirable and practical. In 2006 the NCCUSL adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to establish procedures for addressing interstate jurisdictional, transfer, and enforcement issues relating to adult guardianship and protective proceedings.

Summary of Substitute Bill:

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Act) is adopted. The Act establishes standards for determining the state court with primary jurisdiction over guardianship and protective proceedings, procedures for communication and cooperation between state courts, methods for transferring jurisdiction to another state, and recognition and enforcement of out-of-state orders. A "guardianship proceeding" is a proceeding for the appointment of a guardian to make decisions regarding the person of an adult (respondent). A "protective proceeding" is a proceeding to appoint a guardian of the estate, or a conservator, to administer the property of a person.

Communication and Cooperation Between Courts.

Procedures for allowing communication and cooperation between state courts are provided. A Washington court may communicate with a court of another state, and with the parties, concerning a guardianship or protective proceeding. A Washington court involved in a guardianship or protective proceeding may request the court of another state to take certain action, such as holding an evidentiary hearing, ordering a person in the other state to produce evidence or give testimony, or ordering that an evaluation or assessment be made of the respondent. A Washington court has jurisdiction to grant a request for assistance from a court of another state involved in a guardianship or protective proceeding.

When a witness is located in another state, the court may order the testimony of the witness to be taken in another state and the witness's testimony may be offered by deposition. The court may permit a witness located in another state to be deposed or testify by telephone or audiovisual or other electronic means.

Jurisdiction.

Procedures are established for resolving interstate jurisdictional issues in guardianship and protective proceedings. Primary jurisdiction over these proceedings rests in the "home state," followed by a state in which the respondent has a "significant connection."

A "home state" means the state in which the respondent is physically present for at least six consecutive months immediately before the filing of the petition. A "significant-connection state" is a state with which the respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. Factors for determining a significant connection are provided and include: the length of time the respondent has been present in the state; the location of family and property; and other ties to the state, such as voting registration or vehicle registration.

A significant-connection state may exercise jurisdiction if: (1) there is no home state; (2) the home state has declined to exercise jurisdiction; or (3) no action has been filed in the home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court is a more appropriate forum than a court in another state.

A state that is not a home state or a significant-connection state may exercise jurisdiction if the home state and significant-connection states have declined to exercise jurisdiction because the state is a more appropriate forum.

Regardless of these jurisdictional requirements, a court may have special jurisdiction to: (1) in an emergency, process a petition for the appointment of a guardian for a person who is physically present in the state for a term of up to 90 days; and (2) issue a protective order with respect to property that is located in the state if a petition for appointment of a guardian or conservator is pending or has been approved in another state.

Additional procedures are established for resolving jurisdictional issues if proceedings are pending in more than one state and for declining jurisdiction if the court determines there is a more appropriate forum or if jurisdiction was acquired through unjustifiable conduct.

Transfer of Guardianship Cases.

A process is created for transferring a guardianship of the person or guardianship of the estate to another state. A Washington court may transfer a guardianship to another state if the court is satisfied the guardianship will be accepted by the other state, the incapacitated or protected person is expected to move to the other state, and adequate arrangements for the person's care or management of the person's property have been made in the other state. The court may order the transfer after receiving a provisional order of acceptance from the court receiving the transfer.

A Washington court may accept a transfer of a guardianship or a conservatorship from another state unless the transfer of the case would be contrary to the interests of the incapacitated or protected person, or the guardian or conservator is ineligible for appointment in Washington.

When a guardianship or conservatorship is transferred, the court accepting the transfer must recognize the order from the other state, including the determination of incapacity and the appointment of the guardian or conservator.

Registration and Enforcement of Out-of-State Orders.

A guardian or conservator appointed in another state may register the guardianship or protective order in an appropriate Washington court by filing the order as a foreign judgment.

Once registered, the guardian or conservator may exercise in Washington all powers authorized in the order of appointment, unless prohibited by Washington law, including maintaining actions or proceedings in Washington courts. A Washington court may grant any relief available under Washington law to enforce a registered order.

Substitute Bill Compared to Original Bill:

The substitute bill revises the terminology used in the Act to conform to Washington law relating to guardianship. The substitute bill also limits the special jurisdiction provisions to conform to procedures available under Washington law for temporary emergency protection and to allow protective orders only where a petition for an appointment of a guardian or conservator is pending or has been approved in another state.

The substitute bill changes the effective date of the bill to January 1, 2010, (instead of 90 days) and clarifies that only the non-jurisdictional provisions of the bill apply retroactively to guardianship proceedings commenced before the effective date.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2010.

Staff Summary of Public Testimony:

(In support) This is a uniform act that is intended to iron out jurisdictional issues that can arise in guardianship proceedings where more than one state may have an interest in the matter. It will save time and money and prevent wasted efforts in jurisdictional disputes. Guardianship is an area of the law where it makes sense to have a "home state" rule that is similar to family law jurisdictional rules. People may own property in more than one state, have homes in more than one state, or spend extended time staying with family in other states.

The procedures for determining which state has jurisdiction is a murky area of the law that courts across the states are struggling with. The bill creates a default set of rules to determine which state has jurisdiction in a given case. It also creates an orderly process for transferring guardianship proceedings from one state to another. This bill is important in making sure that guardianship orders are recognized and given effect in other states.

(Information) The purpose behind this bill is a good one. It will be helpful to establish a process for working out jurisdictional issues. There are methods in the current law to deal with some of these issues, but it is a very cumbersome process. The bill may need some changes to make sure it does not conflict with Washington guardianship laws. The effective date should be extended so that there will be time to make the necessary changes to the model guardianship forms.

(Opposed) None.

Persons Testifying: (In support) Marlin Appelwick, Washington Uniform Legislation Commission.

(Information) Robert Nettleton, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.